

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KEITH HARRIS,

Plaintiff,

vs.

TARGET CORP.,

Defendant.

CASE NO. 06CV2370 - H (POR)

**ORDER DENYING MOTION  
TO PROCEED IN FORMA  
PAUPERIS AND  
DISMISSING CASE  
WITHOUT PREJUDICE**

On October 25, 2006, Plaintiff Keith Harris, proceeding pro se, commenced this action against Defendant Target Corporation. Plaintiff concurrently filed a motion to proceed in forma pauperis ("IFP") under 28 U.S.C. § 1915(a). For the reasons stated below, the Court DENIES Plaintiff's motion to proceed IFP and sua sponte DISMISSES the case without prejudice for failure to state a claim.

**Discussion**

**I. Motion to Proceed In Forma Pauperis**

Section 1915(a) allows a court to authorize a lawsuit's commencement without payment of the filing fee if the plaintiff submits an affidavit demonstrating his or her inability to pay the filing fee. Such affidavit must include a complete statement of the plaintiff's assets. Here, Plaintiff has not completed the declaration of assets. While he indicates that his last employment ended on September 19, 2005, he has not indicated the amount of his take home salary, the pay period, or the name and address of his last

1 employer. To provide the Court with more information, Plaintiff may complete the  
 2 attached request to proceed in forma pauperis. The Clerk of Court shall attach a copy  
 3 of the request to proceed in forma pauperis to this order.

## 4 **II. Sua Sponte Dismissal pursuant to 28 U.S.C. § 1915(e)(2)**

5 Notwithstanding payment of any filing fee or portion thereof, a complaint filed  
 6 by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory  
 7 and sua sponte review and dismissal by the court to the extent it is “frivolous, or  
 8 malicious; fails to state a claim upon which relief may be granted; or seeks monetary  
 9 relief against a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);  
 10 Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. §  
 11 1915(e)(2)(B) are not limited to prisoners.”).

12 “[W]hen determining whether a complaint states a claim, a court must accept as  
 13 true all allegations of material fact and must construe those facts in the light most  
 14 favorable to the plaintiff.” Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000); Barren  
 15 v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that 1915(e)(2) “parallels  
 16 the language of Federal Rule of Civil Procedure 12(b)(6)”). Under Fed. R. Civ. P.  
 17 12(b)(6), a complaint should not be dismissed for failure to state a claim unless it  
 18 appears beyond a doubt that the plaintiff could prove no set of facts in support of his or  
 19 her claim for relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Bautista v. Los  
 20 Angeles County, 216 F.3d 837, 842 (9th Cir. 2000). Conclusory allegations of law,  
 21 however, are insufficient to defeat a motion to dismiss. Epstein v. Washington Energy  
 22 Co., 83 F.3d 1136, 1140 (9th Cir. 1996). Courts grant 12(b)(6) relief only where a  
 23 plaintiff's complaint lacks a “cognizable legal theory” or sufficient facts to support a  
 24 cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir.  
 25 1990).

26 The Fair Credit Reporting Act (“FCRA”) sets forth requirements for users of  
 27 consumer credit reports who take adverse action on the basis of information contained  
 28 in the reports. See 15 U.S.C. § 1681m. In particular, users taking an adverse

1 employment action must meet certain notice requirements:

2 (a) Duties of users taking adverse actions on basis of information  
3 contained in consumer reports

4 If any person takes any adverse action with respect to any consumer that  
5 is based in whole or in part on any information contained in a consumer  
6 report, the person shall--

7 (1) provide oral, written, or electronic notice of the adverse action  
8 to the consumer;

9 (2) provide to the consumer orally, in writing, or electronically--

10 (A) the name, address, and telephone number of the  
11 consumer reporting agency (including a toll-free telephone  
12 number established by the agency if the agency compiles  
13 and maintains files on consumers on a nationwide basis)  
14 that furnished the report to the person; and

15 (B) a statement that the consumer reporting agency did not  
16 make the decision to take the adverse action and is unable to  
17 provide the consumer the specific reasons why the adverse  
18 action was taken; and

19 (3) provide to the consumer an oral, written, or electronic notice of  
20 the consumer's right--

21 (A) to obtain, under section 1681j of this title, a free copy of  
22 a consumer report on the consumer from the consumer  
23 reporting agency referred to in paragraph (2), which notice  
24 shall include an indication of the 60-day period under that  
25 section for obtaining such a copy; and

26 (B) to dispute, under section 1681i of this title, with a  
27 consumer reporting agency the accuracy or completeness of  
28 any information in a consumer report furnished by the  
agency.

16 Id.

17 In this case, Plaintiff does not cite to any particular statutory provisions, but only  
18 makes general allegations that Target violated the FCRA. He complains that Target  
19 denied him employment based on an inaccurate credit report. Further, he asserts that  
20 Target violated the law when it did not verify the information in the report. He does  
21 not, however, direct the Court to any provision of the FCRA requiring a potential  
22 employer to verify information before making a decision regarding employment.  
23 Rather, as indicated above, the FCRA requires users to comply with certain notice  
24 provisions. Plaintiff does not allege that Target violated the FCRA's notice provisions,  
25 and the documents he attached to the complaint and to which he refers in his allegations  
26 indicate that Target provided him with notice.

27 Plaintiff also alleges that Target violated the law because it indicated in its denial  
28 letter that only California applicants must submit to a background check. The letter

1 Plaintiff attached to his complaint and references in his allegations, however, does not  
2 indicate whether applicants from other states must submit to a background check.  
3 Further, Plaintiff has not indicated what law Target allegedly violated by this conduct.  
4 Accordingly, Plaintiff has failed to state a claim for relief.

5 **Conclusion**

6 For the reasons stated above, the Court **DENIES** Plaintiff's motion to proceed  
7 IFP and sua sponte **DISMISSES** without prejudice the complaint for failure to state a  
8 claim. The Court **GRANTS** Plaintiff until **December 8, 2006** to file an amended  
9 complaint that addresses the deficiencies of the complaint set forth above. Further, if  
10 Plaintiff seeks to amend his complaint, he must either submit the requisite filing fee or  
11 file a completed IFP application. The Clerk of Court shall attach a copy of the request  
12 to proceed in forma pauperis to this order.

13 IT IS SO ORDERED.

14 DATED: November 7, 2006

15   
16 MARILYN L. HUFF, District Judge  
17 UNITED STATES DISTRICT COURT  
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23  
24

25 Copies To:

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